

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30690
Docket No. MW-30105
95-3-91-3-536

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned an outside concern (the Roof Company of Cheyenne) to perform roofing work at the Purchasing & Materials Store Department Building in Cheyenne, Wyoming beginning on April 23, 1990 (System File: S-336/900528).

(2) The Agreement was further violated when the Carrier failed to timely meet with the General Chairman to discuss matters relating to the contracting out of said work as required by Rule 52.

(3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, B&B Carpenters G. B. Roper, P. J. Kern and J. W. Lamons shall each be allowed an equal proportionate share of the total number of man-hours expended by the above contractor forces performing the roofing work in question beginning on April 23, 1990 and continuing."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 19, 1989, the Carrier wrote to the General Chairman in pertinent part as follows:

"This is to advise of the Carrier's intent to solicit bids in connection with the reroofing of the Store Department Building at Cheyenne, Wyoming. The roofing material used is an EPDM rubber roofing membrane and requires special tools which the Carrier does not possess. Additionally, the manufacturer guarantees the product only if it is installed by authorized personnel and Carrier employees do not possess the skills needed to perform this work.

Work of this nature has customarily been performed by outside forces."

As to the roofing work itself, the Board need not examine the contrasting arguments as to whether the work could or should have been assigned to Carrier forces. This question has been resolved in at least two previous occasions involving roofing work and the same parties as here.

Third Division Award 29539 examines in full detail the arguments of both parties, concluding that "if a mixed past practice of contracting out similar work can be established", as was in fact done, then a denial of the Organization's claim is appropriate. Public Law Board No. 4219, Case 8, again reviewing the arguments in full detail, concluded as follows:

"The Organization bore the burden of presenting evidence of a system-wide pattern of using Maintenance of Way personnel to perform all roof repairs on the property. Because the Organization did not do so, the claim must be denied."

The only other aspect of this dispute concerns whether the Carrier met the requirements of Rule 52 as to notice and conference with the Organization. The correspondence record indicates the Carrier's willingness to discuss the matter in conference, but the Organization did not take advantage of the opportunity to do so for an extended period. In the meantime, the Carrier proceeded with contracting the work, which commenced on May 10, 1989, months after Rule 52's requirement of 15 days' notice.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.

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